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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No.

ANDREW J. EASTER,
Petitioner,

v.

N. JEROME ZIFF, AND HAROLD ROSEN,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Petitioner prays that a Writ of Certiorari to review the decisions of the Court of Appeals of Maryland, No. 47, S.T., 1965, entered on April 19, 1965, granting the motions of the respondents to dismiss the appeal filed by the petitioner on February 13, 1965, and the denying on April 28, 1965, of petitioner's motion for reconsideration of said motion in spite of and due to the fact that an associate judge of the Court of Appeals had extended time to April 1, 1965, for the clerk of the lower court to transmit the record, and due to the fact that the clerk of the Court of Appeals had certified that the record had been received on March 31, 1965, and also stated that the Brief for Appellant due to be filed May 10th, 1965.

OPINIONS BELOW

The verdict of the Court of Common Pleas of Baltimore City, on May 27, 1964, on the illegal instructions of the court to the jury on the incorrect Prayers of the defendants, the denial of the plaintiff's motion for judgment N.O.V. on August 21, 1964, and the denial on January 14, 1965, of the petition for reconsideration of the motion of judgment N.O.V. or for a new trial or in the alternative to Remove the Record, were motions filed in time but were not acted upon by the substitute judge of said court as diligently as required as decisions had to be determined before an appeal could be filed. See Docket Entries and Index to Appendix.

JURISDICTION

The decision of the Court of Appeals of Maryland entered April 19, 1965, (App. 15a). The motion, filed April 23, 1965, for reconsideration of the respondents' motions to dismiss appeal, (App. 16a) was denied April 28, 1965, (App. 19a). This Court has jurisdiction under 28 U.S.C. 1257 (3).

STATUTES INVOLVED

The pertinent provisions of Articles 50, 57, 73A, of the Annotated Code of Maryland, 1957, appear on page 7.

QUESTIONS PRESENTED

Whether the courts below correctly found in denying the petitioner a contributory judgment, regardless of the mortgage agreement (1) that the trial court judge's instructions to the jury was in accord with the law and facts and that the judge was diligent in the later actions, and (2) that although the appellate court judge signed

an order to extend time to transmit the record, the appellate court granted the respondents' motion to dismiss appeal filed by petitioner on February 13, 1965, although the respondents neglected to file said motion until April 7, 1965.

STATEMENT

The petitioner was and is now the owner of a tract of land in Baltimore City, State of Maryland, now known as No. 6608 Belair Road; that on the 19th day of November, 1948, the petitioner and Honey Lane, Inc., a body corporate, incorporated under the laws of the State of Maryland, entered into an "Agreement and Lease". the same being duly recorded among the Land Records of Baltimore City in Liber M.L.P. No. 7648 folio 290, wherein the company was to erect on said premises a building to be used by it as a restaurant, on the terms and conditions set forth in said Agreement and Lease, among which was an obligation assumed by the said petitioner to procure a mortgage from the Baltimore Federal Savings and Loan Association to the extent of Twenty Thousand ($20,000.) "for the purpose". to be used by the respondents for and in connection with the construction of said building, and was so used, and it was further provided therein that the said respondents, president and vice-president, respectively, of said company, would join in and become "parties" to said mortgage (*as individuals*), and they did so join in the execution of said mortgage, which mortgage was executed simultaneously with said Agreement and Lease, and the said Mortgage, dated the 19th day of November, 1948, was duly recorded among the Land Records of Baltimore City in Liber M.L.P. No. 7639 folio 182, etc.; that shortly after the erection of said building and the entrance into said restaurant business, the said Honey Lane Inc., was declared to be insolvent in a proceeding entered in the Circuit Court of Baltimore City on the 23rd day of July, 1950, and the same was

duly liquidated in said proceeding, Liber M.L.P. No. 90A, Folio 6, No. A31030.

As the said Mortgage was not liquidated by said Honey Lane, Inc., in accordance with the terms of said Agreement and Lease, and that as said respondents made no attempt to pay off, or to join in the paying off, of said Mortgage, or otherwise to comply with the terms thereof, the petitioner had to take charge of said property or lose his said land, along with said building, and to be liable for any deficit that might result from the foreclosure, and he did take charge thereof and through rents and the use of his own funds finally liquidated the said Mortgage on the 5th day of August, 1958, and a Short Release thereof by the Central Savings Bank, purchaser of said account from said association, was filed on the 21st day of August, 1958, duly recorded among the Land Records of Baltimore City in Liber M.L.P. No. 7639 folio 184; and therefore the said mortgage and all other obligations and expenses incident thereto have been liquidated by him.

The petitioner had made repeated demands upon said respondents for a reimbursement for the money paid by him in liquidating said mortgage and for the said incidental expenses and obligations incurred in connection with the management of said property, to the extent of one-third thereof each, as they had in said "Agreement and Lease" *agreed "to join in and become parties to the aforesaid Mortgage"*, and the parties thereto were to stand in the same relationship to each other as if they were joint owners of said property, and to be in all respects liable as joint mortgagors, and the obligation under said mortgage was to be a continuing one until each party thereto had paid his aliquot part; that the respondents, in response to the request thereof, and also in compliance with their demands in this case, were supplied with an account showing the collections, disbursements, and other charges incident thereto, made in connection

with the management of said property, and the liquidation of said mortgage, as aforesaid, but the respondents have failed and refused to make said payments as a consequence of said demands, and do still fail to pay any part of said account and charges.

ARGUMENT

As the questions are of importance and are illustrative in that the lower court and court of appeals have by their decisions, departed from the usual and accepted course of judicial proceedings, and especially since the obligation of the petitioner in agreeing to allow the respondents to borrow $20,000., to fullfill the required amount of construction costs to erect a building to be used as a restaurant, under the control of the respondents, on the property in Baltimore City owned by the petitioner for a period of thirty years, so as to fullfill the prohibition in said lease, or the said respondents, as tenant, not to borrow, etc., including contracts of sale, (cash basis); and as a part of the lease an agreement was made under seal, by the petitioner and the respondents that the mortgage would be secured by the proposed building and on the land owned by and guaranteed by the petitioner, which mortgage was to be signed by their individual names, and the liability of each was the same.

And as part of the rental provision of the lease the respondents were to pay the monthly installments of the principal and interest, taxes, water rent, etc., and other expenses; and that any reletting shall not operate as a termination of the lease, or the waiver or postponement of any right of the landlord against the respondents, or under execution on a judgment obtained or any adjudication in bankruptcy, as witnessed the hand and seal of said respondents.

Should any default occur in any of the covenants, conditions, and agreements of the said mortgage, said associ-

ation should foreclose said mortgage and make a sale of the property therein described; and in the event of any deficiency of the amount realized from the sale, and the amount due on said mortgage, with costs of foreclosure, said deficiency may be made up and paid to the trustee; said payment so made by the trustee to be credited on said mortgage deficiency; under seal.

Within a period of about three months after the opening of the said restaurant, the respondents filed for receivership due to an alleged assignment for the benefit of creditors, (contract of sale of equipment) although the restaurant customers waited on both sides of the building sidewalk to be served. The Honey Lane Corporation was liquidated therein, in spite of said lease agreement prohibiting the purchasing of any of the equipment by conditional sales contract.

REASONS FOR GRANTING THE WRIT

The respondents were partners for about thirty years in various ventures, and were the petitioner's original tenants of 6608 Belair Road restaurant, and who had not been seen until the lower court trials in 1964; this litigation resulted from the respondents' violating a thirty year lease which prohibited them from incurring any obligation on said project, including the purchasing of some of the restaurant equipment by conditional sales contract, which was the reason for the alleged receivership, although the restaurant was a large success, etc.

Although the respondents were partners in the said restaurant business, the petitioner was a partner with the respondents in the securing and the payment of the construction loan as per the agreement, appendix 1, herein; therefore the courts below incorrectly found for the respondents by the use of the two prayers submitted by the judge on his instructions to the jury that "the plaintiff had a primary obligation to pay the mortgage and

that the defendants were acting in the role of guarantors," Defendants' Prayer No. 1, App. 2, "and that the plaintiff had not produced legally sufficient evidence to show an obligation for payment by the defendants'," Defendants' Prayer No. 2, App. 3.

The plaintiff's Prayer No. 1, App. 4, reference the said contentions of the respondents and the judge, and in opposition to the respondents' position, was substantiated by the construction loan agreement, App. 1, and the lease filed and submitted in evidence respectively in said case. The motion and the petition for judgment N.O.V. and reconsideration filed in the trial court by the petitioner, App. 5, 6, were not acted upon as diligently as required, as decisions had to be determined, before an appeal could be filed for relief in such actions.

The Annotated Code of Maryland, 1957:—Art. 50. Sec. 1-8,—Joint obligors, Effect of judgment on joint debt against one as to liability of rest,—Art. 57. Sec. 1, 10,—Where one joint maker of note is required to pay the whole amount, he is entitled to recover contributions from his co-makers on account money paid. *Bardy* v. *Bradt*, 110 Md. 656, 72A. 567; *Hooper* v. *Hooper*, 81 Md. 155, 31A. 508.—As to payments by co-maker of joint and several note, payment by one is payment for all, one acting verturally as agent for all. *Webner* v. *Gacther*, 68 Md. 342, 12A. 8, 253.—Where he himself has exercised usual or ordinary diligence for the discovery and protection of his right. *Piper* v. *Jenkins*, 207 Md. 308, 113A. (2d) 919;—Art. 73A. Sec. 9-23.—Joint obligors—Partners after disolution—Duties and rights of partners, relations.—Sec. 28.—Interest, charging partners with interest on unsatisfied judgment.

THEREFORE, where one joint maker of note pays it, statute begins to run against his right to contribution, from date of such payment (Release from Baltimore Central Bank, August 5, 1958) *Brady* v. *Brady* 110 Md. 155,

31A. 508,—Right of partner to contribution from co-partners after dissolution,—And a person, interest in the land subject to the mortgage, though not personally bound to pay it, upon doing so for his own protection has the same right. *Ellsworth* v. *Lockwood*, 42 N.Y. 89, *Averall* v. *Taylor* 8 N.Y. 44.—Art. 73A. Sec. 34.

The failure of the respondents' attorneys to act in time in their efforts to defeat the petitioner's case, by filing motions April 7, 1965 to have the appeal dismissed on the pretense that the appeal was not within the thirty day requirement yet the respondents' attorneys lacked diligence in waiting nearly two months after the appeal was filed on February 13, 1965, to file their motions, and their negligence in not objecting to the petitioner's motion for an extension of time as requested by the lower court clerk to transmit the record, App. 9. The appellate court *judge of the Court of Appeals* granting said extension, as permitted by the rules. App. 10. The *clerk of the Court of Appeals* certifying that said record was received on the thirty first day of March, 1965, and stated—*Brief for Appellant due to be filed May 10th, 1965.* App. 11.

The Court of Appeals of Maryland was either unaware of the filing and actions of the various matters involving the litigents herein or arbitrarily granted the respondents' motions to dismiss the appeal, April 19, 1965, App. 12. And the motion filed on April 23, 1965, App. 13, by the petitioner for reconsideration of the court's action on respondents' motion to dismiss appeal—"has been considered by the court and said motion was denied April 28, 1965, App. 14; which was the final action of the lower courts to deny the petitioner a contributory judgment, that the petitioner is entitled as per the Construction Loan Agreement and all of the above.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this peittion for a writ of certiorari be granted.

ANDREW J. EASTER,
In Proper Person,

2801 Adams Mill Road, N.W.,
Apt. 108,
Washington, D.C., 20009,

Petitioner.

Background:

Trained in the Fine Arts—to observe and to recognize the Fact. The original of the reproduction above is one of the appellant's best works.

CERTIFICATION

It is hereby certified by the undersigned that this petition is presented in good faith and not for delay and that the petition is restricted to grounds which are confined to intervening circumstances of substantial or controlling effect.

ANDREW J. EASTER

AFFIDAVIT OF SERVICE
(Jurat dated July 21, 1965)

ANDREW J. EASTER

IN THE SUPERIOR COURT OF BALTIMORE CITY

DOCKET ENTRIES AND INDEX TO APPENDIX

Docket Entries Page			Appendix and Page No.
1-3	27 July 1959	Declaration and Election for Jury Trial filed, Claim $30,000.00. Docket 1959, folio 1210, No. 56947.	
4		Writ of Summons issued. Construction Loan Agreement. App. 1.	1a-4a
5	18 Sept. 1959	Appearance of Marvin Poe Sklar, Esq. and David Diener, Esq. for defendant, N. Jerome Ziff Same day Demand for Particulars filed.	
6-7	22 Sept. 1959	Appearance of Alexander Yankelove, Esq. for defendant, Harold Rosen Same day Special Plea filed.	
8-9	22 Sept. 1959	Defendant's (Harold Rosen) Demand for Particulars filed.	
10	23 Sept. 1959	Plaintiff's Exceptions to Defendant's (Rosen) Demand for Particulars filed.	
11	23 Sept. 1959	Plaintiff's Interrogatories to Defendant, Harold Rosen filed.	
12	23 Sept. 1959	Plaintiff's Exceptions to Defendant's (Ziff) Demand for Particulars filed.	
13-14	30 Sept. 1959	Plaintiff's Answer to Demand for Particulars by Defendant, Harold Rosen filed.	
15	30 Sept. 1959	Plaintiff's Answer to Demand for Particulars by Defendant, N. Jerome Ziff filed.	
16-18	6 Oct. 1959	Defendant's (Ziff) Demurrer to Nar, Affidavit and Request for hearing filed.	
19	22 Oct. 1959	Defendant's (Rosen) Answers to Interrogatories and Affidavits filed.	
20-22	21 Dec. 1959	Defendant's (Ziff) Demurrer to Nar "Sustained" 30 days to amend (TUCKER, Judge).	
20-22	18 Jan. 1960	Plaintiff's Amended Declaration and Election for Jury Trial filed, Claim $30,000.00.	
23	27 Jan. 1960	Defendant's (Ziff) Demurrer to Amended Nar filed.	

Docket Entries Page			Appendix and Page No.
24	4 Feb. 1960	Defendant's (Rosen) Demurrer to Amended Nar filed.	
25	11 Mar. 1960	Defendant's (Ziff) Demurrer to Amended Nar "Sustained" with leave to amend in 20 days (FOSTER, Judge).	
25	11 Mar. 1960	Defendant's (Rosen) Demurrer to Amended Nar "Sustained" with leave to amend in 20 days (FOSTER, Judge).	
25-27	28 Mar. 1960	Plaintiff's Second Amended Declaration and Election for Jury Trial filed, Claim $30,000.00.	
28	4 Apr. 1960	Defendant's (Ziff) Demurrer to Second Amended Nar filed.	
29	7 Apr. 1960	Defendant's (Rosen) Demurrer to Second Amended Nar filed.	
30	28 Sept. 1960	Defendant's (Ziff) Demurrer to Second Amended Nar "Overruled" with leave to plea in 15 days (FOSTER, Judge).	
30	28 Sept. 1960	Defendant's (Rosen) Demurrer to Second Amended Nar "Overruled" with leave to plea in 15 days (FOSTER, Judge).	
31-32	10 Oct. 1960	Defendant's (Ziff) Pleas 1 and 2 General Issue, 3 Special filed to Second Amended Nar filed.	
32-34	13 Oct. 1960	Defendant's (Rosen) Special Plea to Second Amended Nar filed.	
32-34	13 Oct. 1960	Defendant's (Rosen) General Issue Plea to Second Amended Nar filed.	
32-34	13 Feb. 1963	Defendant's (Ziff) Motion for a Judgment of Non Pros and Nisi Order of Court filed.	
35-36	25 Feb. 1963	Plaintiff's Answer to Deft's (Ziff) Motion for Judgment of Non Pros filed.	
37	28 Feb. 1963	Defendant's (Rosen) Answer to Defendant's (Ziff) Motion for Judgment of Non Pros filed.	
37	15 Mar. 1963	Defendant's (Ziff) Motion for a Judgment of Non Pros "Denied" (CARTER, Judge).	
38	18 Mar. 1963	Entered on Trial Docket.	

Docket Entries Page			Appendix and Page No.
39	8 May 1964	Appearance of Charles F. Stein, III, Esq. for Plaintiff filed.	
40	8 May 1964	Plaintiff's Replication to Special Plea of Limitations filed.	
41	26 May 1964	Jury sworn etc. (DIGGES, Judge).	
42-44	27 May 1964	Verdict in favor of the Defendants for costs of suit. PRAYERS, App. 2-4.	5a, 6a
42-44	27 May 1964	Judgment on Verdict Nisi.	
45	1 June 1964	Plaintiff's Motion for a Judgment N.O.V. or for a New Trial filed. App. 5.	7a, 8a
46	21 Aug. 1964	Plaintiff's Motion a Judgment N.O.V. or for a New Trial "Denied" (DIGGES, Judge).	
45	21 Aug. 1964	Judgment made absolute in favor of the Defendants for costs of suit.	
46	24 Aug. 1964	Plaintiff's Petition for Reconsideration of the Motion for Judgment N.O.V. or for New Trial, or in the alternative to Remove Record filed. App. 6, 7.	9a, 10a
46	14 Jan. 1965	Plaintiff's Petition for Reconsideration of the Motion for Judgment N.O.V. or for New Trial or in the alternative to Remove Record "Denied" (DIGGES, Judge).	

IN THE COURT OF APPEALS OF MARYLAND
DOCKET ENTRIES AND INDEX TO APPENDIX

47	13 Feb. 1965	Plaintiff's Appeal to Court of Appeals filed. App. 8.	11a
48-50	9 Mar. 1965	Motion to strick appearance of Marvin Poe Sklar for defendant, N. Jerome Ziff and Order of Court granting same filed.	
51-52	15 Mar. 1965	* Plaintiff's Petition to Extend time for transmitting record to Court of Appeals until 1 April, 1965 and Order of Court of Appeals filed. App. 9.	12a
53-56	15 Mar. 1965	Plaintiff's Exhibits 1, 2, 3, & 4.	

Docket Entries Page		Appendix and Page No.
17 Mar. 1965	Letter from Clerk of Superior Court of Baltimore City "On Monday, March 15, 1965, Judge Wilson K. Barnes, Associate Judge of the Court of Appeals of Md. signed an order extending the time in which to transmit the above record to the Court of Appeals until *April 1, 1965.*" App. 10.	13a
31 Mar. 1965	*Notice from Court of Appeals of Md.—"I Hereby Certify, that on the thirty-first day of March nineteen hundred and sixty-five I received from the Clerk of the Superior Court of Baltimore City Transcript of Record to the Court of Appeals of Maryland in the above entitled cause. * *Brief for Appellant due to be filed MAY 10th, 1965* J. Lloyd Young, Clerk of the Court of Appeals of Md." App. 11.	14a
7 Apr. 1965	Motion to Dismiss appeal filed (Harold Rosen).	
9 Apr. 1965	Motion to Dismiss appeal filed (N. Jerome Ziff).	
19 Apr. 1965	Motions to dismiss appeal granted and appeal dimissed. App. 12.	15a
22 Apr. 1965	MOTION FOR RECONSIDERATION OF APPELLEES' MOTION TO DISMISS APPEAL, mailed to the Court of Appeals of Maryland. App. 13.	16a-18a
28 Apr. 1965	The motion, filed on April 23, 1965, for reconsideration of appellee's motions to dismiss appeal in the case of Andrew J. Easter vs N. Jerome Ziff and Harold Rosen, No. 47, September Term, 1965, has been considered by the Court and, for your information, said motion was denied this date. App. 14.	19a

APPENDIX 1

CONSTRUCTION LOAN AGREEMENT

THIS AGREEMENT, Made this 19th day of November, in the year one thousand, nine hundred and forty-eight between Andrew J. Easter, J. Jerome Ziff and Harold Rosen hereinafter referred to as Owners, parties of the first part; and Walter S. Calwell of the City of Baltimore, in the State of Maryland, hereinafter referred to as Trustee, party of the second part.

WHEREAS, the party of the first part has borrowed the sum of twenty thousand and 00/100 ($20000) Dollars from Baltimore Federal Savings and Loan Association and has deposited in said Association the sum of $25,600.00 upon the representation and promise that forty-five thousand, six hundred and 00/100 ($45600.00) Dollars will be employed and used exclusively in improving as hereinafter described, the parcel of ground known as 6608 Belair Rd., more particularly described in a mortgage from Andrew J. Easter, J. Jerome Ziff, Harold Rosen to Baltimore Federal Savings and Loan Association, dated 11/19/48, and recorded among the Land Records of Balto. City, Md.

WHEREFORE, in consideration of the premises and of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, it is agreed as follows:

First: That said sum of $45600.00 Dollars shall be hereby deposited with Walter S. Calwell, Trustee, in trust, without the power of revocation except as hereinafter provided, upon the following terms and conditions:

(a) That said Trustee shall deposit said money in his name, as Trustee and purchase in his name, as Trus-

tee, savings shares in the Baltimore Federal Savings and Loan Association.

(b) That the aforesaid premises shall be improved by the Owner on or before the 19th day of March, 1949, in the following manner:

By the construction and completion of a drive-in restaurant in strict accordance with the plans and specifications lodged heretofore with said Trustee.

(c) The Trustee at the request of said Owner shall be authorized to pay to said Owner said money deposited with the Trustee in the sums in the following installments, said installments only to be payable in the sums and upon the completion of the work hereinafter enumerated when in the opinion of the Trustee the work has been fully performed and has been inspected:

It is understood that the Trustee named herein shall, at no time and under no circumstances, receive compensation for the performance of the duties imposed.

1. When excavation is completed and foundation is in placd.	$3875.00
2. When brickwork is completed and ready for structural steel.	6500.00
3. When roofing is on and building is ready for plastering.	12000.00
4. When plastering and inside cementing are completed ready for glass.	7500.00
5. When glass is installed.	7525.00
6. When all inside trim work is completed ready for painting.	5500.00
7. When completed.	2700.00

The issuance of certificates by the architects mentioned in the building contract is a condition precedent to the issuance of payments under this schedule.

The said Owner agree to build in strict accordance with the plans lodged as aforesaid with the Trustee.

It is agreed that if said building is not erected in strict accordance with the plans and specifications, the said Trustee, is not obligated to pay the money which would ordinarily be due on account of the said work.

It is further agreed, that said Trustee or his agent or agents may at any time enter said premises to inspect the same and to assure himself that said structure is being built in strict accordance with the aforesaid plans and specifications.

Second: Should any default occur in any of the covenants, conditions, and agreements of the mortgage from said Andrew J. Easter, J. Jerome Ziff, Harold Rosen to Baltimore Federal Savings and Loan Association and said Association should foreclose said mortgage and make a sale of the property therein described; and in the event of any deficiency of the amount realized from the sale of said property and the amount due on said mortgage, with costs of foreclosure, said deficiency may be made up and paid to the mortgagee out of the unexpended balance of trust funds in the hands of the Trustee; said payment so made by the Trustee to be credited on said mortgage deficiency.

Third: It is agreed that in case of the absence, incapacity, or death of Walter S. Calwell that Joseph J. Callahan shall act as Trustee with all the powers, rights, and duties conferred upon Walter S. Calwell.

AS WITNESS the hands and seals of Andrew J. Easter, J. Jerome Ziff and Harold Rosen, Owners.

ALSO WITNESS the hand and seal of Walter S. Calwell, Trustee.

WITNESS

/s/ Andrew J. Easter (SEAL)
ANDREW J. EASTER

/s/ Jerome Ziff (SEAL)
JEROME ZIFF

/s/ Harold Rosen (SEAL)
HAROLD ROSEN

As To ..... (SEAL)
WALTER S. CALWELL, Trustee

APPENDIX 2

DEFENDANTS' PRAYERS FOR THE JURY

PRAYER NO. 1

The Court instructs the Jury that if they find from the evidence that Andrew Easter, Plaintiff, had a primary obligation to pay the mortgage and that the Defendants were acting in the role of Guarantors to Baltimore Federal, the Mortgagors, then the verdict shall be in favor of the Defendants.

26-27, May, 1964.

APPENDIX 3

PRAYER NO. 2

The Court instructs the Jury that the Plaintiff has not produced legally sufficient evidence to show an obligation for payment by the Defendants and therefore the verdict shall be in favor of the Defendants.

26-27, May, 1964.

APPENDIX 4

PLAINTIFF'S PRAYER No. 1

The Plaintiff prays the Court to instruct the jury that if they shall find from the evidence that the Plaintiff and Honey Lane, Inc., a Corporation under the control of the Defendants, entered into an agreement to permit the defendants to borrow the added money to erect a building to be used as a restaurant on the property in Baltimore City owned by the Plaintiff, and that as a part of their agreement the Plaintiff and the Defendants made a mortgage of Twenty thousand dollars on the proposed building and on the land owned by the Plaintiff, which mortgage the Plaintiff and the Defendants were to sign in their individual names as if joint owners of both building and land, and that under the mortgage the liability of the Plaintiff and each Defendant was the same; and the land and improvement to secured and shall further find that Honey Lane, Inc., went into receivership (by way of an assignment for the benefit of creditors) shortly after starting business and was liquidated therein; in violation of the law and shall further find that the owner of the land, the Plaintiff herein, found it necessary to take over the restaurant building in order to protect his land and property and to avoid foreclosure of the mortgage thereon, and that he did take over the same as his property based on the authority given to him under the terms and conditions of the instrument in evidence known as Agreement and Lease; and further find that the Plaintiff did pay off the mortgage and all expenses incident thereto, then the Plaintiff is entitled to have contribution in an amount equal to One-third of the amount so paid by him from each Defendant.

26-27, May, 1964.

APPENDIX 5

IN THE SUPERIOR COURT OF BALTIMORE CITY

D. 1959, F. 1210, File No. 56947

ANDREW J. EASTER,
Plaintiff,

v.

N. JEROME ZIFF and HAROLD ROSEN,
Defendants.

MOTION FOR A JUDGMENT N. O. V., OR FOR A NEW TRIAL OR IN THE ALTERNATIVE TO REMOVE RECORD

Andrew J. Easter, plaintiff in the above entitled matter, in proper person hereon, by leave of plaintiff's counsel first had, pursuant to the Maryland Rules of Procedure, move the Court for a Judgment N. O. V., or for a New Trial; or in the alternative the transmittal of the record of proceedings to some other court to hear and determine the same as provided by the Constitution and for the following:

1. That the verdict was against the evidence.

2. That the verdict was against the weight of the evidence.

3. Because of errors, reference liability and limitations, etc., and in the ruling and instructions of the Court.

4. Because of the Court's restricting testimony and the withholding of part of plaintiff's exhibit from the jury.

5. Because of new and authoritative evidence, etc.

6. And for other good and sufficient reasons to be given at the time of the motion.

/s/ Andrew J. Easter,
In Proper Person,
Plaintiff

1, June, 1964

Certified.

* * * *

APPENDIX 6

* * * *

PETITION FOR RECONSIDERATION OF THE MOTION FOR A JUDGMENT N. O. V., OR FOR NEW TRIAL, OR IN THE ALTERNATIVE TO REMOVE RECORD

Andrew J. Easter, plaintiff, in proper person herein, move the Court, to Reconsider its verbal determination, at the hearing on August 21, 1964, on plaintiff's Motion, filed on May 30, 1964, for reasons delineated in the Motion, and stated by the Court, in addition to the than stated and the new authoriatative pertinent evidence, requested to be presented, etc., as follows:

a. The plaintiff has tenatively arranged an appointment with Mr. Walter S. Caldwell, the attorney and trustee of and for the above parties and the building association, etc., to appear as an authoriatative witness.

b. For the investigation of an alleged after trial remark, by a member of the jury, that may have influenced and prejudiced the plaintiff's cause.

c. To permit the reconsideration of this proceeding, so as to present the above witness's evidence, etc., for the Court to arrive at a verdict on the facts and the law, so as to make expensive, etc., appeals unnecessary.

d. And for other reasons to be presented at the time of the hearing on the above petition.

25, August, 1964

Certified.

ANDREW J. EASTER,
In Proper Person,
Plaintiff

* * * *

APPENDIX 7

SUMMONS FOR WITNESS

COURT OF COMMON PLEAS OF BALTIMORE CITY

* * * *

MR. SHERIFF:

Please issue summons for the following witnesses: Mr. Walter S. Calwell, c/o Baltimore Federal Savings & Loan Association, Fayette & St. Paul Streets, Baltimore 3, Maryland, and to bring with him the Agreement made on the 19th day of November, 1948, between Andrew J. Easter, H. Jerome Ziff and Harold Rosen, in reference to the loan of $20,000.00, for the purpose and use to improve etc., the parsel of ground known as 6608 Belair Road, Baltimore 6, Maryland—and all papers records, etc., in relation with said loan and the repayment of same.

And to appear before Judge Digges, Room 451, Wednesday, January 13th, 1965, @ 4 P.M., Court House, Baltimore, Maryland *to testify for the* plaintiff

Returnable ..... *the* ..... *day of* ..... *19*....., *at 9.45 A. M.*

Issued ..... *19* ....

/s/ Andrew J. Easter,
In Proper Person,
Plaintiff

APPENDIX 8

ORDER OF APPEAL

IN THE SUPERIOR COURT OF BALTIMORE CITY

* * * *

MR. CLERK:

Enter an Appeal to the Court of Appeals on behalf of the plaintiff.

13, February, 1965

Certified

/s/ Andrew J. Easter,
In Proper Person,
Plaintiff.

* * * *

APPENDIX 9

IN THE SUPERIOR COURT OF BALTIMORE CITY

* * * *

APPLICATION TO EXTEND TIME FOR TRANSMITTING RECORD

The plaintiff, petitioner, Andrew J. Easter, pursuant to Rule 825 of the Maryland Rules of Procedure, respectfully applies to the Court for sixty (60) days, up to and including May 14, 1965, and for causes of said application says that the petitioner has been engaged in preparing other cases, etc., required by procedure, etc., and so that the clerk of said court may prepare the original record on appeal herein.

Respectfully submitted,

/s/ Andrew J. Easter,
In Proper Person,
Plaintiff

15, March, 1965

Certified

* * * *

APPENDIX 10

SUPERIOR COURT OF BALTIMORE CITY
Baltimore 2, Md.
March 17, 1965

Mr. Andrew J. Easter
2801 Adams Mill Road, N.W.
Apartment 108
Washington, D.C. 20009

Re: Easter vs. Ziff

Dear Sir:

On Monday, March 15, 1965, Judge Wilson K. Barnes, Associate Judge of the Court of Appeals of Md. signed an order extending the time in which to transmit the above record to the Court of Appeals until *April 1, 1965.*

It will be necessary for you to have the checks, one payable to the Clerk, Court of Appeals in the amount of $20.00, and one payable to the Clerk of the Superior Court in the amount of $75.65 and all exhibits, transcript of testimony in Mr. Ensor's hands by March 26, 1965.
I remain,

Very truly yours,

/s/ Robert H. Bouse
ROBERT H. BROUSE
Chief Deputy Clerk
Legal Department

17, March, 1965

APPENDIX 11

COURT OF APPEALS OF MARYLAND

No. 47 September Term, 1965

ANDREW J. EASTER

vs.

N. JEROME ZIFF, ET AL.

Andrew J. Easter, proper person
for Appellant

David Diener, Alexander Yankelove
Attorneys for Appellees

MARYLAND, Sct:

I Hereby Certify, that on the thirty-first day of March nineteen hundred and sixty-five I received from the Clerk of the Superior Court of Baltimore City Transcript of Record to the Court of Appeals of Maryland in the above entitled cause.

Brief for Appellant due to be filed May 10th, 1965.

/s/ J. Lloyd Young
Clerk of the Court of Appeals of Maryland.

31, March, 1965

APPENDIX 12

THE COURT OF APPEALS—ANNAPOLIS, MARYLAND

April 19, 1965

Alexander Yankelove, Esq.
Attorney at Law
Suite 1C Pleasant Place
8 East Pleasant Street
Baltimore, Maryland 21202

Dear Mr. Yankelove:

The Court has considered your motion filed on April 7, 1965, on behalf of Harold Rosen, one of the appellees, together with the motion filed on April 9, 1965, by David Diener, Esq. on behalf of N. Jerome Ziff, the other appellee, both to dismiss the appeal in the case of *Andrew J. Easter* vs. *Harold Rosen, et al.*, No. 47, September Term, 1965, and, for your information, both motions were granted and the appeal dismissed this date.

The mandate and the original papers will be forwarded to the Superior Court of Baltimore City.

A copy of the mandate is enclosed.

Very truly yours,

J. Lloyd Young
Clerk

19, April, 1965

APPENDIX 13

IN THE COURT OF APPEALS OF MARYLAND

September Term, 1965

No. 47

ANDREW J. EASTER,

Appellant,

v.

N. JEROME ZIFF, and HAROLD ROSEN,

Appellees.

MOTION FOR RECONSIDERATION OF APPELLEES' MOTIONS TO DISMISS APPEAL

The appellant, Andrew J. Easter, respectfully requests the Court to reconsider the granting of the Motions to Dismiss Appeal requested April 7 and 9, 1965, by the appellees in herein case; for reasons and facts due to the lack of the appellees' attorneys to present the complete and other important docket entries as follows:

25 Aug. 1964	Plaintiff's Petition for Reconsideration of the Motion for Judgment N.O.V. or for New Trial, or in the alternative to Remove Record filed.
14 Jan. 1965	Plaintiff's Petition for Reconsideration of the Motion for Judgment N.O.V. or for New Trial or in the alternative to Remove Record "Denied" (DIGGES, Judge).
13 Feb. 1965	Plaintiff's Appeal to Court of Appeals filed.
9 Mar. 1965	Motion to strick appearance of Marvin Poe Sklar for defendant, N. Jerome Ziff and Order of Court granting same filed.

15 Mar. 1965 Plaintiff's Petition to Extend time for transmitting record to Court of Appeals until 1 April, 1965 and Order of Court of Appeals filed.

17 Mar. 1965 Letter from Clerk of Superior Court of Baltimore City "On Monday, March 15, 1965, Judge Wilson K. Barnes, Associate Judge of the Court of Appeals of Md. signed an order extending the time in which to transmit the above record to the Court of Appeals until *April 1, 1965.*"

31 Mar. 1965 Transcript of Record filed in Court of Appeals of Md.

*31 Mar. 1965 Notice from Court of Appeals of Md.—"I Hereby Certify, that on the thirty-first day of March nineteen hundred and sixty-five I received from the Clerk of the Superior Court of Baltimore City Transcript of Record to the Court of Appeals of Maryland in the above entitled cause."

*10 May 1965 "Brief for Appellant due to be filed May 10th, 1965." J. Lloyd Young, Clerk of the Court of Appeals of Maryland.

The appellees not only failed to take any action, even if it were than in order, prior to or after the February 13th date of appellant's Appeal to Court of Appeals, which date was established due to the delay of the substitute judge of the lower court when he denied on January 14, 1965, Plaintiff's Petition for Reconsideration of the Motion for Judgment N.O.V. or for New Trial, etc., filed herein on August 25, 1964, and as shown on the court docket entry. The appellees' attorneys had waited until April 7 and 9, to file their motions to dismiss the appeal, and omitted all of the other and important docket entries; the lack of diligence for filing dismissal, at least at time of notice of appeal, etc., is proof of an effort and a pre-

tense and devised to defeat justice, as this action is only a contributory judgment case. (see Agreement in record)

It is also requested, the Clerk of the Superior Court of Baltimore City, enter and bring to date the docket entries, and return same to and for the purpose of verification of said entries and records to the Court of Appeals, as proof of the facts required for proper Reconsideration of alleged appellee Motions.

THEREFORE, as the Court of Appeals May Shorten or Extend Time, etc., it is requested that the court reconsider its action of April 19, 1965, on the appellees' Motions, and reaffirm its notice of March 31, 1965, Brief for Appellant due to be filed May 10th, 1965, or amend same as required and necessary, so justice may be accomplished.

Respectfully submitted,

/s/ Andrew J. Easter,
In Proper Person,
Appellant.

23, April, 1965

Certified.

* * * *

APPENDIX 14

COURT OF APPEALS OF MARYLAND

* * * *

April 28, 1965

Mr. Andrew J. Easter
2801 Adams Mill Road, N. W.
Washington, D. C. 20009

Dear Mr. Easter:

The motion, filed on April 23, 1965, for reconsideration of appellees' motions to dismiss appeal in the case of *Andrew J. Easter* vs. *N. Jerome Ziff and Harold Rosen*, No. 47, September Term, 1965, has been considered by the Court and, for your information, said motion was denied this date.

Very truly yours,

/s/ J. Lloyd Young
Clerk

28, April, 1965

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 616

ANDREW J. EASTER,
Petitioner,

v.

N. JEROME ZIFF, AND HAROLD ROSEN,
Respondents.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI

Andrew J. Easter, petitioner herein, requests the Court to review the Petition for a Writ of Certiorari to the Court of Appeals of Maryland and the Original Records of the lower courts, filed herein; the docket entries of the writ, pages 11 to 14, and the appendix, are informative as to the proceedings and the court's arbitrary determinations in denying the petitioner a Contributory Judgment; all of which will substantiate the following facts and reasons:

1. First Reason for Granting Rehearing

Although the respondents were partners in various ventures other than officials of Honey Lane Incorporated, a

restaurant built on property owned by the petitioner, they were also lessees of a restricted and optional thirty year lease and as individuals were responsible as mortgagees with the petitioner in securing a loan of $20,000. to complete financing the construction of the restaurant, the petitioner, as owner and landlord, was thereby the guarantor of said mortgage loan. A substitute judge from southern Maryland while sitting in the Baltimore trial court, *erred* by not awarding the plaintiff a contribution from the defendant co-obligors, by deliberately *rewording* and misrepresenting the plaintiff's and the defendant's Prayers, when instructing the jury to return a verdict for the defendants that the defendants were acting in the role of Guarantors, and Limitations as to time, by a proffer of $2,500., based on three years instead of twelve years as the Lease and Loan Agreements were signed under seal.

2. Second Reason for Granting Rehearing

The substitute judge was also dilatory in not acting in time on plaintiff's succeeding petitions to correct the judge's *error* above, as final action was required before an appeal could be noted.

Although an associate judge of the Court of Appeals of Maryland had extended time for the clerk of the trial court to certify and transmit the original records to the court of appeals by April 1, 1965, same was received and acknowledged by the Clerk of said court on March 31, 1965, and who also stated that, Brief for Appellant due to be filed May 10th, 1965. The Court of Appeals on April 19, 1965, had granted both motions of the appellees to dismiss the appellant's appeal; and on April 28, 1965, denied the appellant's Motion for Consideration of Appellees' Motion to Dismiss Appeal, filed on April 23, 1965.

3. Third Reason for Granting Rehearing

In spite of the success of said restaurant, the respondents, as tenants, in violation of the Lease Agreement prohibiting conditional sales contracts, etc., voluntarily filed receivership about three months after opening and was declared to be insolvent and liquidated as incorporated, Honey Lane, Inc.; but failed to pay off as individuals and as joint obligors to pay the $20,000. loan; the petitioner had to take charge of said property or lose same that would result from a foreclosure; the respondents were and are still liable for said payment as Joint obligors, for reasons as stated and the following:

> The Annotated Code of Maryland, 1957:—Art. 50. Sec. 1-8,—Joint obligors, Effect of judgment on joint debt against one as to liability of rest,—Art. 57. Sec. 1, 10,—Where one joint maker of note is required to pay the whole amount, he is entitled to recover contributions from his co-makers on account money paid. *Bardy* v. *Bradt*, 110 Md. 656, 72A. 567; *Hooper* v. *Hooper*, 81 Md. 155, 31A. 508.—As to payments by co-maker of joint and several note, payment by one is payment for all, one acting virtually as agent for all. *Webner* v. *Gacther*, 68 Md. 342, 12A. 8, 253.—Where he himself has exercised usual or ordinary diligence for the discovery and protection of his right. *Piper* v. *Jenkins*, 207 Md. 308, 113A. (2d) 919;—Art. 73A. Sec. 9-23.—Joint obligors—Partners after disolution—Duties and rights of partners, relations.—Sec. 28.—Interest, charging partners with interest on unsatisfied judgment.
>
> Where one joint maker of note pays it, statute begins to run against his right to contribution, from date of such payment (Release from Baltimore Central Bank, August 5, 1958) *Brady* v. *Brady* 110 Md. 155, 31A. 508,—Right of partner to contribution from co-partners after dissolution,—And a person, interest in the land subject to the mortgage, though

not personally bound to pay it, upon doing so for his own protection has the same right. *Ellsworth* v. *Lockwood*, 42 N.Y. 89, *Averall* v. *Taylor* 8 N.Y. 44. —Art. 73A. Sec. 34.

CONCLUSION

The Court of Appeals was either unaware of the filing of the various actions for and the *granting of time extensions*, etc., or arbitrarily granted the respondents' Motion to Dismiss Appeal and the Motion filed on April 23, 1965, by the petitioner for Reconsideration of the Court of Appeals Dismissing the Appeal; which was final action of the lower courts to deny the petitioner a Contributory Judgment that the petitioner is entitled as per the Construction Loan Agreement and the facts, etc., and the above Annotated Code of Maryland.

ANDREW J. EASTER,
In Proper Person,

2801 Adams Mill Road, N.W.,
Apt. 108,
Washington, D.C., 20009
(Adams 2-3874)

Petitioner.

Background:

Trained in the Fine Arts—to observe and to recognize the Fact. The original of the reproduction above is one of the appellant's best works.

CERTIFICATION

It is hereby certified by the undersigned that this petition is presented in good faith and not for delay and that the petition is restricted to grounds which are confined to facts.

ANDREW J. EASTER

AFFADAVIT OF SERVICE
(Jurat dated January 26 , 1966)

ANDREW J. EASTER